

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
SIDE JURISDICTION  
CRIMINAL APPLICATION NO.4467 OF 2006**

Shri Iqbal Ahmad Mohammad Harun ...Applicant.  
V/s.  
1. Shri Azfar Ahmad Afzal & Ors. ...Respondents.

Shri Rameshwar Gite, adv. for the Applicant.  
Shri U.V.Nikam, APP for the Respondent no.7/State.

**CORAM: J.H.BHATIA, J.  
DATE : 28th February, 2007.**

**P.C.:**

1. Heard Mr.Gite, the learned counsel for the applicant. Perused the papers.

2. This is an application filed by the original complainant for cancellation of bail granted by the learned Additional Sessions Judge at Malegaon to respondent nos.1 to 6. According to the applicant, heavy misappropriation was committed by the trustees of a trust running a madarsa and therefore, the applicant had made complaints against the trustees namely, Afzal Ahmed Maulavi and others and this fact was published in newspaper. On 29-4-2001 at 2.30 p.m. when he came out from mosque, respondent nos.1 to 6 assaulted him, felled him on the ground and took him in an open space near a pharmacy college by taking him in a Maruti van. There

also he was beaten with the sticks, iron pipes, etc. He shouted. Hearing the shouts some people gathered there, therefore, the assailants ran away. Later on, he was taken to his locality on a cot and then to the hospital. From the contents of the application, it appears that on the basis of report, crime no.33 of 2001 came to be registered under Sections 143, 147, 148, 363, 326 read with Section 149 of the I.P.C. and under Section 135 of the Bombay Police Act at Malegaon City police station. The accused persons were arrested on 1-5-2001. They were granted bail by the J.M.F.C., Malegaon. After that the present applicant made an application before the J.M.F.C. contending that the offence under Section 364(A) I.P.C. is committed and the case should be committed to the Court of Sessions. The learned J.M.F.C. found that no ingredients of the offence under Section 364(A) were made out but it appeared that the offence under Section 367 of the I.P.C. was committed. That offence is also triable by the Court of Sessions and therefore, by the order dated 16-8-2006, he committed the case to the Court of Sessions for trial. It appears that after committal of case to the Court of Sessions, respondent nos.1 to 6 appeared before the Sessions Court and made an application for bail. By the impugned order dated 16-9-06, the Additional Sessions Judge granted bail to them in the sum of Rs.15,000/-

with surety in the like amount. This order is challenged in the present application by the original complainant. He seeks cancellation of that order.

3. From the facts stated above, it is clear that respondent nos.1 to 6 were granted bail by the J.M.F.C.Malegaon more than 5 years before the impugned order was passed by the Additional Sessions Judge. During all this period, respondent nos.1 to 6 were on bail. Even the respondent nos.1 to 6 were on bail for a period of more than 5 years before the case was committed to the Court of Sessions, there could be no justification for the Sessions Court to refuse the bail. Hence, I find no fault in the order passed by the Additional Sessions Judge.

4. For the aforesaid reasons, application stands rejected.

**(J.H.Bhatia, J.)**